

## REMARKS

### Formal Matters

Claims 7-20 are pending.

Claims 7-20 were examined and rejected.

Applicants respectfully request reconsideration of the application in view of the remarks made herein.

### Interview Summary

Applicants wish to express their gratitude to Examiner Sisson and for the interview on September 10, 2003, with Applicants' representative J. Keddie. The teachings of Hammershoi and Blackburn, in relation to the claimed invention, were discussed.

During the Interview, the Examiner and J. Keddie reviewed the pending claims and agreed that a metal ion, independent of the labeled probe, *is* recited in the claims.

The Examiner indicated that the claims will be allowable upon submission of written argument to support the assertions made by the Applicants during the interview. The Applicants provide herewith such written arguments, and respectfully request withdrawal of all remaining rejections.

### Rejection under 35 U.S.C. § 103

The Examiner has maintained the rejection of claims 7-20 under 35 U.S.C. § 103 over Blackburn (USPN 6,264,825) in view of Hammershoi (J. Inorg. Biochem, 49:295-304, 1993), because Blackburn assertedly discloses a hybridization method, which, when combined with the transition metal complexes of Hammershoi, renders the claims obvious. The Applicants again traverse the rejection.

The Applicants previously argued that both Hammershoi and Blackburn fail to disclose a method in which a metal ion is used independently of the labeled probe, and, as such, these references, taken independently or separately, fail to teach an element of the rejected claims.

In response to our previous arguments, the Examiner stated that "This argument has not been found to be persuasive towards the withdrawal of the rejection, as applicant is

arguing limitations not present in the claims. It is noted with particularity that there is no recitation as to when the metal ion is added to the reaction.” In other words, the basis of the response is the Examiner’s assertion that a metal ion, independent of the labeled probe, is not recited in the claims.

In reply to the Examiner’s response, the Applicants respectfully direct the Examiner’s attention to elements (a) and (b) of claim 7, which read as follows:

(a) ***hybridizing a probe having an attached label with said target to produce an initial complex***, wherein the label produces a signal in response to application of a potential;

(b) ***adding a metal ion to the initial complex*** to produce a final electrically conductive complex

(emphasis added)

Similar limitations are found in claim 20.

As such, according to the rejected claims, a metal ion is added to an initial complex of a probe and a target that is already present. In other words, contrary to the Examiner’s response to our previous arguments, the claims recite a metal ion that is separate from the labeled probe since it is added *after* the probe has been hybridized.

Further, with respect to the Examiner’s assertion that there is no recitation as to when the metal ion is added to the reaction, the Applicants note that the wording of the claim, as discussed above, indicates that *the metal ion is added to an initial complex of a probe and a target that is already present*. As such, the Applicants respectfully submit that there is a recitation in the claims as to when the metal ion is added to the reaction: it is added *after* the probe.

Accordingly, the Applicants respectfully submit that Hammershoi and Blackburn fail to teach a limitation that *is* present in the claims, namely a metal ion that is independent of the probe.

In view of the foregoing discussion, withdrawal of this rejection is respectfully requested.

### CONCLUSION

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone Tim Joyce at (650) 485 4310.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-1078.

Respectfully submitted,  
BOZICEVIC, FIELD & FRANCIS LLP

Date: Sept 29, 2003

By: James S. Keddie  
James S. Keddie, Ph.D.  
Registration No. 48,920

Date: 9-29-03

By: Bret Field  
Bret Field  
Registration No. 37,620